BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

RIC WOOLSEY	)	
Claimant	)	
VS.	)	
	)	Docket No. 239,226
CENTRAL AIR CONDITIONING COMPANY, INC.	)	
Respondent	)	
AND	)	
	)	
TRAVELERS INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier appealed the preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on February 15, 1999.

ISSUES

Respondent denies claimant sustained personal injury by accident arising out of and in the course of claimant's employment with respondent. Respondent argues claimant's condition is instead a natural and probable consequence of an injury that occurred in September 1997 when claimant was working for another employer. Respondent also disputes the ALJ's finding that claimant provided timely notice of accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes for the reasons stated below that the Administrative Law Judge's Order should be affirmed.

Findings of Fact

1. Claimant's previous injury occurred while moving a water heater in September of 1997. At that time claimant experienced left arm, shoulder, and neck pain, as well as weakness and headaches. He also described a general loss of strength on his left side. He denied having any problems on his right side however. Claimant was diagnosed as having herniated discs at C5-6 and C6-7.

2. Claimant was treated by neurosurgeon Paul S. Stein, M.D. In October 1997 he received a cervical epidural steroid injection which helped significantly. He also received physical therapy. Thereafter in November 1997, he returned to work but avoided heavy lifting. Nevertheless, he continued to have symptoms. On April 15, 1998 claimant was given a 5 to 7 percent permanent impairment rating and permanent restrictions by Dr. Stein. Claimant was also examined and rated by P. Brent Koprivica, M.D., on September 17, 1998. No right sided complaints were noted. He was found to be at maximum medical improvement for his September 5, 1997 injury but at increased risk of further aggravating injury based on the C5-6 and C6-7 herniations. Claimant was assigned a 15 percent whole person impairment rating by Dr. Koprivica.

3. Claimant began working for respondent August 17, 1998. Claimant alleges his ongoing symptoms began to worsen in October 1998 and he also noticed new symptoms in his right arm. During this time claimant continued to receive medical treatment but not through his employer. Claimant did not return to Dr. Stein. Instead, he received treatment from Dr. Holman and Dr. Zollinger, both are chiropractors.

4. On October 27, 1998, claimant returned to Dr. Zollinger and told him that the symptoms had worsened. Dr. Zollinger felt the cause of claimant's worsened condition was due, in part, to the fact he had never rested adequately after the September 1997 injury. Dr. Zollinger recommended claimant take a couple of weeks off work to rest. But claimant indicated that he continued to worsen even after he left work on October 30, 1998.

Conclusions of Law

The Appeals Board has jurisdiction to consider the issues of whether there was a new accidental injury and whether the condition for which claimant is seeking benefits arose out of and in the course of his employment with respondent. K.S.A. 44-534a(a)(2).

No physician has addressed the question of whether claimant has sustained a new injury or whether instead his present symptoms are the direct and natural result of his prior injury. Claimant attributes his worsened condition to the work he was performing with respondent but at the preliminary hearing claimant also testified that his symptoms are not a whole lot different than they were back in September of 1997. Claimant testified, however, that his right arm problems have become more pronounced.

Generally, workers compensation laws require an employer to compensate an employee for personal injury or aggravation of a preexisting injury incurred through accident arising out of and in the course of employment. K.S.A. 44-501(a); Kindel v. Ferco Rental, Inc., 258 Kan. 272, Syl. ¶ 2, 899 P.2d 1058 (1995); Baxter v. L.T. Walls Constr. Co., 241 Kan. 588, 738 P.2d 445 (1987). The question of whether there has been an accidental injury arising out of and in the course of employment is a question of fact. Harris v. Bethany Medical Center, 21 Kan. App. 2d 804, 909 P.2d 657 (1995).

In Jackson v. Stevens Well Service, 208 Kan. 637, 493 P.2d 264 (1972), the court held:

> [W]hen a primary injury under the Workmen's Compensation Act is shown to have arisen out of and in the course of employment every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury.

Claimant is seeking preliminary hearing benefits for a series of aggravations that occurred between August 17, 1998 and October 30, 1998. The question of whether the aggravation of claimant's condition is compensable under this docketed claim turns on whether that aggravation stemmed from claimant's work-related activity and a new accidental injury with this respondent. *See* Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, 573 P.2d 1036 (1978). Based upon the evidence presented, the Appeals Board finds that it did.

As to notice, the Appeals Board also agrees with the finding by the ALJ. Claimant's injury occurred over a period of time or each and every working day. The last day he worked for respondent before leaving work because of his injury was October 30, 1998. Although claimant testified to an earlier conversation with his foreman, Scott, notice was given to Frank Rinke, the company president, no later than November 9, 1998, which was within 10 days of the accident date.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on February 15, 1999, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 1999.

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
William L. Townsley III, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director